



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 63

RIN 2900-AO71

Health Care for Homeless Veterans Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its medical regulations concerning eligibility for the Health Care for Homeless Veterans (HCHV) program. The HCHV program provides per diem payments to non-VA community-based facilities that provide housing, outreach services, case management services, and rehabilitative services, and may provide care and/or treatment to homeless veterans who are enrolled in or eligible for VA health care. The rule modifies VA's HCHV regulations to conform to changes enacted in the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012. Specifically, the rule removes the requirement that homeless veterans be diagnosed with a serious mental illness or substance use disorder to qualify for the HCHV program. This change makes the program available to all homeless veterans who are enrolled in or eligible for VA health care. The rule also updates the definition of homeless to match in part the one used by the Department of Housing and Urban Development (HUD). The rule further clarifies that the services provided by the

HCHV program through non-VA community-based providers must include case management services, including non-clinical case management, as appropriate.

DATES: This final rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Robert Hallett, Health Care for Homeless Veterans Manager, c/o Bedford VA Medical Center, Veterans Health Administration, 200 Springs Road, Bldg. 17, Bedford, MA 01730; (781) 687–3187. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The HCHV program is authorized by section 2031 of title 38, United States Code (U.S.C.), under which VA may provide to eligible veterans outreach; care, treatment, and rehabilitative services (directly or by contract in community-based treatment facilities, including halfway houses); and therapeutic transitional housing assistance, under 38 U.S.C. 2032, in conjunction with work therapy under 38 U.S.C. 1718(a)-(b). Under current regulations, only veterans who are homeless, enrolled in the VA health care system or eligible for VA health care under title 38, Code of Federal Regulations (CFR), § 17.36 or 17.37, and have a serious mental illness and/or substance use disorder are eligible for the program. 38 CFR 63.3(a).

In a document published in the Federal Register on May 15, 2014 (79 FR 27826), VA proposed to amend part 63 of 38 CFR to remove the requirement that homeless veterans must suffer from a serious mental illness or substance use disorder to be eligible for HCHV, to modify the definition of the term “homeless” to match in part

the definition used by HUD, and to require HCHV providers to offer case management services to homeless veterans, as appropriate. We provided a 60-day comment period, which ended on July 14, 2014. We received seven comments, all of which supported the proposed changes to part 63.

One commenter stated that it is shameful that homeless veterans have to be diagnosed with an illness before they can receive the benefits they have earned through military service. Before the enactment of Public Law 112-154, § 302, 126 Stat. 1164, 1184 (Aug. 6, 2012), VA only had authority to provide HCHV services to veterans with serious mental illness, including veterans who are homeless. As amended, the law authorizes VA to make services under the HCHV program available to all homeless veterans VA provides care and services to, regardless of whether they have a serious mental illness. VA fully supports the change in law, and agrees with the commenter that benefits for homeless veterans provided through the HCHV program should not be predicated on a diagnosis of serious mental illness. This regulation will remove that requirement, thereby allowing all eligible homeless veterans to receive services. VA is not making a change based on this comment.

Another commenter asked VA to make the changes in the proposed rule, stating that homeless veterans should be provided resources through the HCHV program regardless of whether or not they have a mental illness. Another commenter stated her wholehearted support for the proposed amendment. Another commenter stated the proposed changes need to be passed. We appreciate the commenters taking the time to review this rulemaking.

Another commenter expressed support for the rule and noted that the proposed change could reduce the social stigma many homeless veterans who do not suffer from a serious mental illness feel about seeking assistance to address their homelessness. Another commenter noted that removing the requirement of a diagnosis for mental illness would also help homeless veterans with serious mental illness access the program, as they may not have been willing to acknowledge their disability before. We agree and believe that these changes will help more homeless veterans, both those with and without a serious mental illness, access the health care services they need through the HCHV program.

One commenter expressed support for the proposed changes, but identified two concerns. First, the commenter urged VA to request increased funding and resources to accommodate the number of new enrollees that would be eligible as a result of the proposed rule. Second, the commenter stated their concern that the proposed rule could have the unintended effect of disadvantaging homeless veterans with a serious mental illness if HCHV providers find that veterans without a mental illness are easier to place or receive the bulk of the services available. While the first comment is somewhat outside the scope of this rule, VA will take into account the changes made as a result of this rule when determining the resources it will allocate for the HCHV program. However, VA notes that the rule should not result in any increased expense to the Department, as it only modifies the pool of eligible persons, rather than the number of persons served. As explained in the proposed rule, the principal driver of costs is bed availability, which would not change as a result of this rule. Similarly, and also in response to the second comment, VA has found that the supply of HCHV services

generally exceeds demand, so we do not believe there will be a shift in emphasis or a reduction in services from homeless veterans with a serious mental illness. Further, the HCHV provider would be prohibited from engaging in discrimination by virtue of entering into a contract with VA as a recipient of Federal financial assistance. Pursuant to 38 CFR 63.10(a)-(b), HCHV providers must enter into a contract with VA in order to be granted financial assistance. VA is authorized by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 706, 794) and VA's implementing regulations in subpart D, part 18, 38 CFR to prohibit discrimination against persons on the basis of handicap by any party that receives Federal financial assistance. Under these authorities, any HCHV provider is prohibited from discriminating against beneficiaries on the basis of a disability, including a serious mental illness.

Based on the rationale set forth in the proposed rule and in this document, VA is adopting the proposed rule as a final rule with no changes.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rule removes the requirement that veterans have a serious mental illness to participate in the HCHV program and clarifies that the HCHV program includes case management services. This rule only impacts those entities that choose to participate in the HCHV program. As of June 2014, approximately 300 non-profit entities participate in the HCHV program. We do not expect this rule to result in any additional costs or economic impacts on these entities, as the rule modestly expands the population of veterans eligible to receive care and requires case management services consistent with current practice. Small entity applicants will not be affected to a greater extent than large entity applicants. Small entities must elect to participate, and this clarification simply reinforces the services these entities are already providing. The expanded population of eligible veterans will not result in any additional costs because the principal driver of cost is bed availability, which will not change as a result of this rule. To the extent this rule will have any impact on small entities, it will not have an impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA’s impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the

rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at <http://www.va.gov/orpm>, by following the link for VA Regulations Published from FY 2004 through FYTD.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on April 24, 2015, for publication.

List of Subjects in 38 CFR Part 63

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Health care, Homeless, Housing, Individuals with disabilities, Low and moderate income housing, Public assistance programs, Public housing, Relocation assistance, Reporting and recordkeeping requirements, Veterans.

Dated: April 27, 2015

William F. Russo
Acting Director
Office of Regulation Policy & Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 63 as follows:

PART 63 – HEALTH CARE FOR HOMELESS VETERANS (HCHV) PROGRAM

1. The authority citation for part 63 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, 2031, and as noted in specific sections.

2. Revise § 63.1 to read as follows:

§ 63.1 Purpose and scope.

This part implements the Health Care for Homeless Veterans (HCHV) program. This program provides per diem payments to non-VA community-based facilities that provide housing, outreach services, case management services, and rehabilitative services, and may provide care and/or treatment to all eligible homeless veterans. (Authority: 38 U.S.C. 501, 2031(a)(2))

3. Amend § 63.2 by:

- a. Adding the definition “Case management” in alphabetical order.
- b. Revising the definitions of “Homeless” and “Non-VA community-based provider”.
- c. Removing the definitions of “Serious mental illness” and “Substance use disorder”.
- d. Revising the authority citation at the end of the section.

The addition and revisions read as follows:

§ 63.2 Definitions.

* * * * *

Case management means arranging, coordinating, or providing direct clinical services and support; referring and providing linkage to VA and non-VA resources,

providing crisis management services and monitoring; and intervening and advocating on behalf of veterans to support transportation, credit, legal, and other needs.

* * * * *

Homeless has the meaning given that term in paragraphs (1) through (3) of the definition of homeless in 24 CFR 576.2.

Non-VA community-based provider means a facility in a community that provides temporary, short-term housing (generally up to 6 months) for the homeless, as well as community outreach, case management, and rehabilitative services, and, as needed, basic mental health services.

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(Authority: 38 U.S.C. 501, 2002, 2031)

4. Amend § 63.3 by revising paragraph (a) to read as follows:

§ 63.3 Eligible Veterans.

(a) Eligibility. In order to serve as the basis for a per diem payment through the HCHV program, a veteran served by the non-VA community-based provider must be:

(1) Enrolled in the VA health care system, or eligible for VA health care under 38 CFR 17.36 or 17.37; and

(2) Homeless.

* * * * *

5. Amend § 63.10 by revising paragraph (a) to read as follows:

(a) Who can apply. VA may award per diem contracts to non-VA community-based providers who provide temporary residential assistance homeless persons, including but not limited to persons with serious mental illness, and who can provide the specific services and meet the standards identified in § 63.15 and elsewhere in this part.

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6. Amend § 63.15 by revising paragraph (b) to read as follows:

§ 63.15 Duties of, and standards applicable to, non-VA community-based providers.

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(b) Treatment plans, therapeutic/rehabilitative services, and case management.

Individualized treatment plans are to be developed through a joint effort of the veteran, non-VA community-based provider staff, and VA clinical staff. Therapeutic and rehabilitative services, as well as case management and outreach services, must be provided by the non-VA community-based provider as described in the treatment plan. In some cases, VA may complement the non-VA community-based provider's program with added treatment or other services, such as participation in VA outpatient programs or counseling. In addition to case management services, for example, to coordinate or address relevant issues related to a veteran's homelessness and health as identified in the individual treatment plan, services provided by the non-VA community-based provider should generally include, as appropriate:

(1) Structured group activities such as group therapy, social skills training, self-help group meetings, or peer counseling.

(2) Professional counseling, including counseling on self-care skills, adaptive coping skills, and, as appropriate, vocational rehabilitation counseling, in collaboration with VA programs and community resources.

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